

In the High Court of Punjab and Haryana at Chandigarh.

Civil Writ Petition No.14979 of 2006.

Date of decision:29.10.2007.

Prem Singh and another.

...Petitioners.

Versus

Bharat Sanchar Nigam Limited and others.

...Respondents.

...

Coram: Hon'ble Mr.Justice Satish Kumar Mittal.

Hon'ble Mr. Justice K. C. Puri.

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Present: Mr. N. P. Mittal Advocate for the petitioner.

Mr. H.S. Saini Advocate for the respondents.

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Judgment.

K. C. Puri, J.

Prem Singh and Joginder Paul have preferred this Civil Writ Petition under Article 226 of the Constitution of India for issuance of a writ of Certiorari, Mandamus or any other suitable writ for quashing the impugned order dated 22.7.2006, Annexure P-8.

It is pleaded that petitioner No.1 was initially selected and appointed as Technician in October, 1986 in Roop Nagar SSA whereas petitioner No.2 was appointed as Technician on 31.1.1989. The Government of India issued order dated 27.4.1994 in respect of preparation of eligibility list and select panel for the re-structured cadres in Group C and under

Group C, employees including Technicians borne on the regular establishment in Telecom Engineering Branches were ordered to be converted from Technicians to the re-structured cadre of Telecom Technical Assistant, in short, TTA. The petitioners being eligible and on the regular establishment were promoted in the re-structured cadre scheme on the post of TTA with effect from 23.12.1997. In the erstwhile department of Telecom, Ministry of Telecommunication and Information Technology, there was a scheme called 'One time bound promotion scheme' and under that scheme, the incumbents of regular cadre were to be given next higher pay scale after rendering 16 years of service. Petitioner No.1 completed 16 years of service on 27.10.2002 and was promoted under OTBP Scheme. Similarly, petitioner No.2 completed 16 years of service in the cadre of Technicians on 31.1.2005 and was promoted under the said scheme. The respondent-department conducted a pre-qualification test of entry level i.e. 10+2 or equivalent for appearing in Limited Departmental Competitive Examination against 40% quota in which petitioner No.2 appeared on 24.10.2004 and was declared successful vide order dated 7.1.2005. The office of respondent No.3 vide order dated 22.7.2006, Annexure P8, passed reversion order of both the petitioners from the posts of Telecom Technical Assistants to that of Technicians with effect from 1.7.2005 and ordered recovery of their pay by reducing their pay from the said date. The said order is unsustainable in the eyes of law as no opportunity of being heard was afforded to the petitioners.

On put to notice, respondent Nos.1 to 3 filed joint written statement controverting the pleas taken by the petitioners. It is pleaded that petitioner No.2 qualified the Limited Competitive Examination for TTA

under 40% quota and now has been promoted as TTA on regular basis vide order dated 9.10.2006. However, petitioner No.1 did not appear in the test conducted by the respondents and, therefore, he cannot be promoted as TTA. The initial promotion was by way of officiating arrangement and was irregular. He was, therefore, rightly reverted.

From the pleadings of the parties, two aspects have arisen. First is in respect of promotion of the petitioners and the second is regarding recovery of the amount from 1.7.2005.

So far as the first aspect of the writ petition is concerned, the petitioners have not made out a case for interference in the writ jurisdiction. Admittedly, they were promoted on ad hoc basis as regular candidates were not available. As per promotion policy, the petitioners are required to appear in the departmental examination for promotion to the post of TTA. So far as petitioner No.2 is concerned, he appeared in the examination and was declared successful. He was appointed as regular TTA against 40% quota. As regards petitioner No.1, he has not even appeared in the said examination for promotion under 40% quota. Since petitioner No.1 has himself not availed the remedy available to him, so the Writ Court cannot come to the rescue of petitioner No.1. For promotion under 40% quota, rules have been framed and an employee is required to appear in the departmental examination for promotion to TTA. No legal right has accrued in favour of petitioner No.1 for promotion as TTA. Mere fact that petitioner No.1 was working as TTA on ad hoc basis does not create any legal right for promotion to the post of TTA. So, the prayer of petitioner No.1 for promotion to the post of TTA stands declined. Petitioner No.2 has already been promoted.

Regarding the argument of learned counsel for the petitioners that the petitioners are entitled to promotion under 'One Time Bound Promotion Scheme', no rules have been cited during the course of arguments.

So far as second aspect is concerned, the order of the respondents for recovering the amount by lowering the scale from 1.7.2005 does not sustain the test of legal scrutiny. Both the petitioners were promoted as TTA in officiating capacity and they have worked as such. They have shared the higher responsibility. As such, the action of the respondents in recovering the amount from 1.7.2005 by reducing the scale stands set aside and it is ordered that the respondents shall not be entitled to recover the arrears from 1.7.2005 in the reduced scale till both the petitioners have worked as TTA. So, the writ petition stands partly allowed to that extent.

(K. C. Puri)
Judge

October 29,2007.
Jaggi

(Satish Kumar Mittal)
Judge